

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/12/2003

CORAM

THE HONOURABLE MR JUSTICE V. KANAGARAJ

CIVIL REVISION PETITION NO.1429 OF 2000

1. Sharbudin
2. Ajumudeen
3. Madhurnisa
4. Uma Salma
4. Five Roja ... Petitioners

-Vs-

K. Subramani ... Respondent

Civil Revision Petition under Section 25 of the Tlamil Nadu Buildings
(Lease and Rent Control) Act XVII/60 as amended by Act 1/73 as stated therein.

!For Petitioners : Mr. V. Raghavachari

^For Respondent : Mr. T.R. Rajaraman

:O R D E R

This Civil Revision Petition is directed against the judgement and decree dated 7.10.1999 rendered in R.C.A.No.3 of 1994 by the Court of the Principal Subordinate Judge, Trichy thereby setting aside the fair and decrerall order dated 30.11.1993 rendered in R.C.O.P.No.168 of 1986 by the Court of the Rent Controller (II Additional District Judge), Trichy.

2. Tracing the history of the above civil revision petition having come to be filed, it comes to be known that the petitioners/landlords herein have filed R.C.O.P.No.168 of 1986 before the Court Rent Controller (II Additional District Judge), Trichy for eviction on the ground of wilful default in payment of rent and also for owner's occupation and the above RCOP was allowed, further granting two months time was for eviction. Aggrieved by the said order of eviction, the respondent-tenant preferred an appeal in R.C.A.No.3 of 1994 on the file of the Court of Principal Subordinate Judge, Trichy praying to set aside the order of eviction and the learned Appellate Authority(Principal Subordinate Judge)Trichy allowed the appeal setting aside the order of eviction and dismissing the eviction petition with costs. Aggrieved by the same, the petitioners/landlords have come forward to file the above civil revision petition on certain grounds as brought forth in the grounds of revision such as that the learned appellate authority had failed to appreciate that there is no proof that the tenant had paid the rents from

December, 1984 and the finding of the court below that the issuance of legal notice and money order would establish that there is no default is perverse; that the court below should have seen that the refused money order despatched by the tenant is for the period from July, 1985 onwards; that it is not open to the tenant to despatch the rent for any particular month; that the learned Judge should have seen that the allegation made in Exs.B6 and B7 are grossly irregular and unjustifiable; that the lower appellate court should have seen that the judgement in 1997 II Law Weekly 181 would have no application to the facts of the case; that the learned Judge should have seen that the document under Ex.B6 had not been proved; that the conclusion of the learned Appellate Authority that the landlord is having excess amounts is not substantiated and in any event deserves to be rejected. Hence, the present civil revision petition.

3. During arguments, the learned counsel appearing on behalf of the the petitioners besides tracing the facts and circumstances of the case as to how the present petitioners/landlords initiated the rent control proceeding before the Rent Controller on grounds of default in payment of the monthly rent and for owner's occupation and how the Rent Controller decided it in favour of the landlords thereby allowing the petition and directing the tenant to vacate the premises and hand over vacant possession and that the appellate authority on appeal allowed the same on both grounds as a result of which the landlords have come forward to file the above Civil Revision Petition. To substantiate his case, the learned counsel would also cite a judgement reported in 1999(I) CTC 221 (T. EASWARA RAO VS. N.E. ANSARI (DECD) AND SIX OTHERS) and would pray to allow the above Civil Revision Petition.

4. In reply, the learned counsel appearing on behalf of the respondent/tenant besides factually dealing with the subject would cite a judgement reported in 1996(II) CTC 78 (K. NARASIMHARAO VS. T.M. NASIMUDDIN AHMED) and would ultimately pray to dismiss the above Civil Revision Petition.

5. In consideration of the facts pleaded, having regard to the materials placed on record particularly the fair and decretal order of the Rent Controller and the Judgment and decree of the Appellate Authority and upon hearing the learned counsel for both what could be assessed from the above facts is that it is a Rent Control proceeding initiated by the landlords/petitioners herein seeking eviction of the tenant on grounds of wilful default in payment of monthly rent and requiring the premises for owner's occupation and the Rent Controller (II Additional District Munsif) Tiruchirapalli, having regard to the facts and circumstances of the case has permitted the parties to record their evidence during which on the part of the petitioners/landlords they have examined one witness as P.W.1 who is the third party as the sole witness and on the part of the respondent/tenant he has examined himself as R.W.1.

6. So far as the documentary evidence is concerned, two documents have been marked on the part of the petitioners/landlords as Exs.A1 and A2, Ex.A1 dated 11.12.1985 being the legal notice issued to the respondent, Ex.A2 dated 16.12.1985 being the reply for Ex.A1. On the part of the respondent/tenant 20 documents would be marked as Exs.B1 to B20, Ex.B1 is the note-book having entries towards the payment of rent, Ex.B2 is the unserved postal cover, Ex.B3 dated 24.8.1985 is the letter sent to the first petitioner

by the respondent, Ex.B4 is the Savings Pass-book, Exs.B5 and B6 respectively are the legal notice and the reply, which have already been marked as Exs.A1 and A2, Ex.B7 dated 19.12.1985 is the Money Order coupon, Exs.B8 to B11 are the returned Money Order forms, Ex.B12 dated 7.11.1985 is the receipt for having paid a sum of Rs.180/- in the Bank, Exs.B13 to 18 are the receipts for having paid the different amounts on different dates, Exs.B19 and B20 are the Rental Value Certificates issued by the Trichy Municipality. Having regard to all these evidence placed on record the Rent Controller having found that from December 1984 to June 1986 the respondent/tenant did not file any document for having paid the rent and therefore, without agreeing that he was not in arrears of the monthly rent to the landlords, would give effect to the evidence of P.W.1 deposing to the effect that he was running a mutton stall in a Municipal premises and now for the sale of leather he requires the premises, but no proof has been submitted in confirmation of his claim which according to the Rent Controller was not necessary and that even though on the part of the respondent it has been contended that the petitioners/landlords have other properties in Trichy Town, no proof has been submitted on the part of the tenant to that effect and therefore, on these grounds it would order eviction of the tenant, thus allowing the Rent Control Original Petition.

7. On the contrary the Appellate Authority not only having traced the facts and circumstances pleaded by the parties, but also framing three points for proper consideration of the case and having regard to the evidence placed on record, further having its own discussions would ultimately find that the appellant/tenant before him had not been in arrears of rent nor had the landlords on their part proved to the effect that they really required the premises for their personal use and occupation and these aspects having not been properly established on the part of the landlords and further finding that the tenant had been regular in his payment of monthly rents either making honest attempts to pay rents or deposit the same in the manner required under law and further having placed on record the documents by means of Ex.B series to the said effect the Appellate Authority found that the respondents/landlords before him did not prove on both grounds and therefore, he has arrived at the conclusion that the fair and decretal order passed by the Rent Controller in favour of the respondents/ landlords therein was inconsistent and not sustainable in law and on evidence and would ultimately allow the appeal preferred by the tenant, setting aside the fair and decretal order passed by the Rent Controller and it is only aggrieved, against the said judgment and decree passed by the Appellate Authority the landlords have come forward to file the above Civil Revision Petition.

8. The learned counsel for the Revision Petitioners would rely on a judgment reported in 1999(I) CTC 221 (T. EASWARA RAO VS. N.E. ANSARI (DECD) AND SIX OTHERS), wherein a learned single Judge of this Court in another Civil Revision Petition has held "In the present case, after the purchase of the premises by the respondent on 24.3.1986 he issued the notice under Ex.A-1 dated 1.4.1986, asking the tenant to pay the rent. But, till 30.9.1987, admittedly, except for the six months, the tenant did not pay the rent till the date of filing of the R.C.O.P., and deposited the same on the date of the first hearing of the R.C.O.P. Moreover, the tenant in the R.C.O.P. has not given any valid explanation for non-payment of the said rent, except saying

that he sent the rent by money order but it was refused. It is well settled that merely an attempt to send the rent by money order and thereafter if the rent kept quiet, it cannot be said that the tenant has not committed wilful default in payment of rent. Admittedly, the tenant has not taken any steps under Section 8 of the Act. The authorities below have also taken into consideration of the explanation given by the landlord for refusing to receive the rent sent by the tenant. In view of the above, the findings of the authorities below holding that the tenant has committed wilful default in payment of the rent cannot be interfered with."

So far as the above judgment is concerned adhering to the facts in that particular case wherein the tenant has not taken any step under Section 8 of the Act, but in the case in hand, this tenant has taken all steps necessary in the circumstance of the case has been pointed out by the Appellate Authority and therefore, this decision cited on the part of the learned counsel for the applicant cannot be applied to the case in hand.

9. On the contrary, the learned counsel appearing on behalf of the respondent would cite a judgment reported in 1996(II) CTC 78 (K. NARASIMHARAO VS. T.M. NASIMUDDIN AHMED) wherein the learned Judges while appreciating the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 in a civil Appeal have held that "the landlord is not entitled to claim eviction of tenant on ground of wilful default when he was having excess amount of advance which the landlord is bound to adjust towards the rent due from the tenant and in which event the tenant cannot be held to be a wilful defaulter in payment of rent".

10. Yet another judgment cited on the part of the learned counsel for the respondent is of the Apex Court reported in 1998(I) CTC 729 (Sree Balaji Krishna Hardware Stores v. Srinivasaiah) wherein it is held that "the requirement of the landlord was not bona fide since several other tenanted portions occupied by others for business purposes fell vacant during the pendency of the proceedings and the landlord was not acting bona fide in not using the same for the business of his son" .

11. Since both the above judgments cited on the part of the respondents would serve the purpose for both the grounds raised on the part of the landlords in the given case that is, the first one for wilful default and the other one for owners occupation and in the case in hand since in spite of the attempt made on the part of the tenant to hand over the monthly rents, the landlord evaded the responsibility, which is patently reveal in the case as per the evidence of P.W.1, further proving to the effect that the building was factually occupied by the tenant and that no proper evidence comes forth from the side of the landlords to the effect that they bona fide require the premises for their personal use and occupation, as a result of which the Appellate Authority has found that the Rent Controller having committed grave errors, has rightly set aside the order of the Rent Controller, allowing the appeal preferred by the tenant and therefore, the judgment and decree passed by the Appellate Authority does not require any interference by this Court and hence the following order:

In result,

- (i) the above Civil Revision Petition is without merit and the same is dismissed as such;
- (ii) the judgment and decree dated 7.10.1999 rendered in R.C.A.No.3 of 1994 by the Court of the Principal Subordinate Judge, Trichy thereby setting aside the fair and decreral order dated 30.11.1993 rendered in R.C.O.P.No.168 of 1986 by the Court of the Rent Controller (II Additional District Judge), Trichy is confirmed;
- (ii) there will be no order as to costs;

Index:Yes

Internet:Yes

gr.

□